

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAR 29 1999

In the Matter of)	FEDERAL COMMUNICATIONS COMMISSION
)	OFFICE OF THE SECRETARY
Implementation of the Subscriber Carrier)	
Selection Changes Provisions of the)	
Telecommunications Act of 1996)	
)	CC Docket No. 94-129
Policies and Rules Concerning)	FCC 98-334
Unauthorized Changes of Consumers)	
Long Distance Carriers)	

**OPPOSITION OF SBC TO PETITIONS FOR CLARIFICATION AND
RECONSIDERATION OF EXCEL TELECOMMUNICATIONS, INC.
AND RCN TELECOM SERVICES, INC. ("RCN")**

SBC Communications, Inc. ("SBC")¹ respectfully submits this Opposition to Certain Portions of the Petition for Clarification and Reconsideration of Excel Telecommunications, Inc ("Excel"). It is the position of SBC that the Slamming Order can be implemented as written, with only minor clarification or reconsideration as outlined in SBC's Petition for Reconsideration or Clarification and that the major overhaul of that Order sought by EXCEL and RCN is not only unnecessary, but contrary to the goal of the Commission to take the profit out of slamming.

I. Authorized Carrier's Role

EXCEL and RCN seek to have the Commission reconsider its determination to have the authorized carrier act as judge when a subscriber alleges a slam. The authorized carrier is clearly the entity most likely to find in favor of the customer when the customer

¹ SBC Communications Inc. is the parent company of various subsidiaries, including telecommunications carriers. These subsidiaries include Southwestern Bell Telephone Company ("SWBT"), Pacific Bell, Nevada Bell, and The Southern New England Telephone Company ("SNET"). The abbreviation "SBC" shall be used herein to include each of these subsidiaries as appropriate in the context.

SBC Communications Inc.
Opposition to Petition for Reconsideration and Clarification
March 29, 1999

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alleges that it has been slammed, but presumably the authorized carrier would not be able to support such a decision if the alleged slamming carrier provides proof of verification. If there is any doubt about the validity of that verification, then presumably the Commission would want the doubt resolved in the customer's favor. If the alleged slamming carrier believes that it has proof of verification in compliance with the requirements of the Slamming Order, that carrier can appeal to the Commission, if the amount of money in dispute warrants the appeal process.

The procedure established by the Commission in the Slamming Order places the burden of investigation on the authorized carrier only if the customer has not paid the slamming charges; if the customer has paid the charges, the authorized the carrier can simply send the 60 day letter to the customer, advising the customer of its right to pursue the claim, if it chooses to do so. It is then up to the customer to pursue reimbursement of the full amount paid in a lawsuit or FCC complaint.

RCN argues that the prosecution of slamming claims will have an adverse effect on the authorized carrier/customer relationship. Such allegation is true in the situation where the authorized carrier is confronted with valid evidence of verification and must determine that no slam occurred. The strain on the authorized carrier/customer relationship in that instance could be alleviated by having the alleged slamming carrier rebill its charges, rather than requiring the authorized carrier to do so. SBC suggested that change in its own Petition for Reconsideration and Clarification. The limited investigation obligation imposed on the authorized carrier by the Slamming Order is not unreasonably burdensome. The only change needed is to allow the alleged slamming carrier rebill its charges and clarification that the authorized carrier can recover its cost for that investigation from the customer that caused the problem, if it chooses to do so.

II. Liability of Executing Carrier

No clarification of the liability of the executing carrier, as requested by Excel and RCN, is needed. While it is appropriate that carriers and customers should not be denied their existing remedies if they suffer damage as a result of the failure of an executing carrier to correctly implement a carrier change order, it is not appropriate to impose any greater penalty on an executing carrier. In most instances, such failure would merely be the result of clerical error in entering the order; there would be no motive to defraud, nor any profit to be realized from such action. The statute provided a basis for requiring a carrier that billed unauthorized charges to a subscriber to submit to the authorized carrier all moneys collected from the subscriber for those unauthorized charges. There is no statutory basis for requiring the executing carrier, that has not billed any charges other than PIC change charges to the subscriber, to pay moneys over to the authorized carrier because of a mistake made in the process of entering a carrier change order.

III. Verification of Customer Initiated Carrier Change Orders

There is no need to impose verification requirements on executing carriers when the executing carrier takes an order for a carrier change directly from the customer, as suggested by both Excel and RCN. The Commission correctly recognized that there was no need for verification under such circumstances and created an appropriate exception to the verification requirements.² Slamming does not occur when a customer places an order for the wrong carrier; slamming occurs when a carrier submits an unauthorized carrier change request on behalf of a customer. Imposing such verification requirements on customer-initiated changes would cause the executing carrier to incur needless expense to verify customer initiated change orders that do not need to be verified, complicating the process to impose a costly fix for a problem that does not exist.

² That exception is established in Paragraph 93 of the Slamming Order.

IV. Preferred Carrier Freezes

What EXCEL and RCN are here suggesting is that the Commission should create the same opportunities for unauthorized freeze orders that exist today for unauthorized carrier change orders. The provisions set forth in the Slamming Order in regard to verification of requests from the customer to implement a carrier freeze or to lift a carrier freeze are more than adequate to prevent any misunderstandings on the part of the customer as to what services it is freezing. The objective should be to ensure that the customer's desires as to carrier changes are being correctly implemented and that is the issue addressed by the provisions in the Slamming Order.

The argument that executing carriers must accept freeze orders from carriers in order for those carriers to be able to provide "one stop shopping" is a red herring. In order for carriers to provide one stop shopping, that carrier must provide local and long distance service. Where the local service provider is reselling an ILEC's service or facilities, that carrier can implement and maintain a carrier freeze program. The local carrier can take the orders from its local customers and submit those orders to the ILEC on an automated basis. There is no need to open the freeze process further to allow for one stop shopping. All local exchange service providers can implement and manage freeze programs, not just incumbent local exchange carriers ("ILECs"). So, if the carrier is in a position to offer one stop shopping based on the services it offers to its customers, it will also be in a position to manage its own freeze programs pursuant to the properly authorized and verified orders from its local service customer.

V. Verification of Preferred Carrier Freeze Requests

Again, not only is EXCEL trying to fix a problem that does not exist; the action requested would create problems where there are no problems today. If the executing carrier does not verify that the customer actually wants a freeze on its line before placing

that freeze on the line, these will be some carriers that will submit unauthorized freeze requests for the same reasons that unauthorized carrier changes are submitted by some carriers today. Yet, in the case of freezes, it may be a very long time before the unauthorized freeze order comes to light and by that time, there may be no way to prove how the unauthorized freeze order originated. The process for verification of freeze orders in the Slamming Order is more than adequate to take care of any concerns about the manner in which those orders are being handled today. The changes sought by EXCEL and RCN would create the same opportunity for the submission of unauthorized orders pertaining to preferred carrier freezes that exists today for unauthorized carrier changes. Such action would be a step backwards in customer slamming protection, not a step forward.

VI. Conclusion

While some clarification, and perhaps even reconsideration of very limited issues, of the Slamming Order is warranted, the reconsideration sought by EXCEL and RCN go to the heart of the Order and would not only destroy the effectiveness of the procedural customer protections established in that Order, but would even create new problems for customers in regard to preferred carrier freezes. For all of the reasons set forth above, SBC respectfully requests that EXCEL's and RCN's Petitions for Reconsideration and Clarification be denied as to the issues discussed above.

Respectfully Submitted,

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March 29, 1999